



FEDERAL TRADE COMMISSION

[File No. P222100]

HISA Assessment Methodology Rule Modification

AGENCY: Federal Trade Commission.

ACTION: Notice of Horseracing Integrity and Safety Authority (HISA) proposed rule modification; request for public comment.

SUMMARY: The Horseracing Integrity and Safety Act of 2020 recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority, which is charged with developing proposed rules on a variety of subjects. Those proposed rules and proposed rule modifications take effect only if approved by the Federal Trade Commission. The proposed rules and rule modifications must be published in the *Federal Register* for public comment. Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification. The Authority submitted to the Commission a proposed rule modification on Assessment Methodology on October 20, 2022. The Office of the Secretary of the Commission determined that the proposal complied with the Commission's rule governing such submissions. This document publicizes the Authority's proposed rule modification's text and explanation, and it seeks public comment on whether the Commission should approve or disapprove the proposed rule modification.

DATES: If approved, the HISA proposed rule modification would take effect upon approval, and the Commission must approve or disapprove the proposed rule modification [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments must be received on or before [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the SUPPLEMENTARY INFORMATION section below. Write “HISA Assessment Methodology Rule Modification” on your comment and file your comment online at <https://www.regulations.gov> under docket number FTC-2022-0068. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex B), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Austin King (202-326-3166), Associate General Counsel for Rulemaking, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

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Background

The Horseracing Integrity and Safety Act of 2020¹ recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority, which is charged with developing proposed rules on a variety of subjects. Those proposed rules and proposed rule modifications take effect only if approved by the Federal Trade Commission.² The proposed rules and rule modifications must be published in the *Federal Register* for public comment.³ Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification.⁴

Pursuant to Section 3053(a) of the Horseracing Integrity and Safety Act of 2020 and Commission Rule 1.142, notice is hereby given that, on October 20, 2022, the Horseracing Integrity and Safety Authority ("HISA" or the "Authority") filed with the Federal Trade Commission an Enforcement proposed rule modification and supporting documentation as described in Items I, II, III, and IX below, which Items have been prepared by the Authority. The Office of the Secretary of the Commission determined that the filing complied with the Commission's rule governing such submissions.⁵ The Commission publishes this notice to solicit comments on the proposed rule modification from interested persons.

I. Self-Regulatory Organization's Statement of the Background, Purpose of, and Statutory Basis for, the Proposed Rule Modification

a. Background and Purpose

¹ 15 U.S.C. 3051 through 3060.

² 15 U.S.C. 3053(b)(2).

³ 15 U.S.C. 3053(b)(1).

⁴ 15 U.S.C. 3053(c)(1).

⁵ 16 CFR 1.140 through 1.144; *see also* Fed. Trade Comm'n, Procedures for Submission of Rules Under the Horseracing Integrity and Safety Act, 86 FR 54819 (Oct. 5, 2021), <https://www.federalregister.gov/documents/2021/10/05/2021-21306/procedures-for-submission-of-rules-under-the-horseracing-integrity-and-safety-act>.

The Horseracing Integrity and Safety Act of 2020 (“Act”) recognizes that the establishment of a national set of uniform standards for racetrack safety and medication control will enhance the safety and integrity of horseracing. The Assessment Methodology rule is established in the Rule 8500 Series, the “Assessment Methodology Rule” filed by the Authority with the Commission earlier this year. The Rule 8500 Series was published in the Federal Register on February 18, 2022,⁶ and subsequently approved by the Commission by Order dated April 1, 2022.⁷

The Authority proposes to modify the Rule 8500 Series and to supplement it with additional provisions. The proposed rule modifications are described in detail in Item II of this Notice. The modifications are intended to address suggested changes and potential problems in interpreting and implementing the rule by amending dates specified in the rule, providing a True-Up Calculation based on actual rather than projected starts and purse starts, providing alternative calculation methods should a court enjoin the enforcement of Rule 8500 based on the use of Projected Purse Starts, and addressing the scenario of a State racing commission’s electing to remit fees after the initial election date to remit fees.

The proposed modifications are consistent with the requirements of the Act in that they further the purpose of properly and equitably allocating the costs of the Authority’s operations to the States or Covered Persons involved with Covered Horseraces, as mandated by 15 U.S.C. 3052(f). The cost allocations ensure that the Authority is adequately funded and able to implement the provisions of the Act. Successful implementation of the Act affects Covered Persons, Covered Horses, and Covered Horseraces by ensuring that the horseracing anti-doping and medication control program

⁶ See Fed. Trade Comm’n, Notice of HISA Assessment Methodology Proposed Rule (“Notice”), 87 FR 9349 (Feb. 18, 2022), <https://www.federalregister.gov/documents/2022/02/18/2022-03717/hisa-assessment-methodology-rule>.

⁷ See Fed. Trade Comm’n, Order Approving the Assessment Methodology Rule Proposed by the Horseracing Integrity & Safety Auth. (Apr. 1, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Order%20re%20HISA%20Assessment%20Methodology.pdf.

and the racetrack safety program operate to enhance the safety and integrity of horseracing and all its human and equine participants.

The Act requires that the Authority provide to each State racing commission an estimated amount required from the State to “(i) to fund the State’s proportionate share of the horseracing anti-doping and medication control program and the racetrack safety program for the next calendar year; and (ii) to liquidate the State’s proportionate share of any loan or funding shortfall in the current calendar year and any previous calendar year.”⁸ A state’s proportionate share is to be based on the annual budget of the Authority, “the projected amount of covered racing starts for the year in each State” and shall “take into account other sources of Authority revenue.”⁹

If a State racing commission does elect to remit fees pursuant to 15 U.S.C. 3052(f)(2), then the Authority is required to “not less frequently than monthly, calculate the applicable fee per racing start multiplied by the number of racing starts in the State during the preceding month.”¹⁰ This calculation is required to be allocated equitably “among covered persons involved with covered horseraces pursuant to such rules as the Authority may promulgate” and collected “according to such rules as the Authority may promulgate.”¹¹

With the review, input and ultimate approval of the Authority’s Board of Directors, the proposed rule modification to the Rule 8500 Series enhances the procedures for the Assessment Methodology Rule promulgated by the Authority.

b. Statutory Basis

The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. 3051 through 3060.

II. Self-Regulatory Organization’s Statement of the Terms of Substance of the

⁸ 15 U.S.C. 3052(f)(1)(C)(i).

⁹ *Id.* 3052(f)(1)(C)(ii).

¹⁰ *Id.* 3052(f)(3)(A).

¹¹ *Id.* 3052(f)(3)(B).

Enforcement Proposed Rule Modification and Discussion of Alternatives

Rule 8520(a), as originally filed with the Commission, did not address the scenario of a State racing commission's electing to remit fees after the initial election date to remit fees. The Authority now proposes to add the following language to Rule 8520(a): "If a State racing commission elects to remit fees pursuant to 15 U.S.C. 3052(f)(2) for any subsequent calendar year, the State racing commission shall notify the Authority in writing on or before 30 days from the receipt of the estimated amount provided to the State racing commission pursuant to Rule 8520(b). A State racing commission may be permitted to pay a portion of the estimated amount provided to the State racing commission pursuant to Rule 8520(b). In such case, the remaining portion of the estimated amount provided to the State racing commission pursuant to Rule 8520(b) shall be paid pursuant to Rule 8520(e)." With this revision, Rule 8520(a) allows a State racing commission to elect to remit fees pursuant to 15 U.S.C. 3052(f)(2) for any year that it elects to do so. In addition, the revision permits a State racing commission to pay a portion of the estimated amount provided to the State racing commission pursuant to Rule 8520(b). These modifications afford State racing commissions broader flexibility in their payment options.

As noted below, several commentators suggested that the dates set forth in the proposed modification were confusing. These comments were accepted by the Authority, and a change is proposed to Rule 8520(b) and Rule 8520(e)(4). Rule 8520(b) would now state: "Not later than November 1, 2022, and not later than November 1 of each year thereafter" Rule 8520(e)(4) would now state: "Not later than December 10, 2022, and not later than December 10 each year thereafter" These changes provide greater clarity to the deadlines set forth in Assessment Methodology. New language was also added in Rule 8520(e) to account for partial payments under Rule 8520(a). These changes

make clear that the payments made under Rule 8520(e) shall take into account any partial payments made by State racing commissions.

Rule 8520(f) is a new subsection. The Act and the Assessment Methodology rule necessarily base the annual assessments on Projected Starts and Projected Purse Starts. This new subsection requires the Authority to “true-up” the projected start and purse start amounts with the actual numbers for these amounts. Rule 8520(f) requires the Authority to calculate the actual number of starts in covered horseraces for the previous calendar year and the actual total amount of purses for covered horseraces for the previous calendar year and apply such amounts to the calculations set forth in Rule 8520(c), instead of the projected amounts utilized in the calculation of the estimated amount provided to the State racing commission pursuant to Rule 8520(b) for the relevant calendar year (the “True-Up Calculation”). The current year allocations are then equitably adjusted to account for any differences between the estimated amount provided to the state racing Commission pursuant to Rule 8520(b) for the previous year and the True-Up Calculation. The remainder of Rule 8520(f) addresses a comment posted on <https://www.regulations.gov> during the notice-and-comment period for the Assessment Methodology rule. This new provision allows State racing commissions, horsemen’s organizations, and Racetracks to object to the Equibase numbers. The Authority has been in discussion with industry stakeholders since April of this year concerning the True-Up Calculation, and the calculation is consistent with the goals and purposes of the Act. It is self-evident that the assessments should ultimately be based on actual numbers instead of projected numbers.

Rule 8520(g) is a new subsection. Certain states and stakeholders have objected to the use of Projected Purse Starts in Assessment Methodology. If an injunction enjoins the enforcement of the Rule 8500 Series based on the use of Projected Purse Starts in Assessment Methodology, Rule 8520(g) requires the applicable States, Racetrack,s and

Covered Persons, as the case may be, to pay the allocation due from each State pursuant to 15 U.S.C. 3052(f)(1)(C) and 15 U.S.C. 3052(f)(3)(A)–(C) proportionally by the applicable State’s respective percentage of Projected Starts. Rule 8520(g) operates as a savings clause and ensures that Assessment Methodology will continue to operate during any court challenges.

All the changes proposed in the Assessment Methodology proposed rule modification are intended to enhance the Rule 8500 Series in a manner that is consistent with the Act. The modifications have been crafted to address specific issues in the most precise manner possible, and no reasonable alternatives presented themselves for consideration. The proposed rules are carefully tailored to the unique character of horseracing and to the organizational structure of the Authority.

III. Self-Regulatory Organization’s Summary of Comments Received Pre-Submission and Its Responses to Those Comments

As encouraged by the Commission’s procedural rule, the Authority, before finalizing this submission to the Commission, made a draft of the Assessment Methodology proposed rule modification available to the public for review and comment on the HISA website, <https://www.hisausregs.org/>. On September 19, 2022, and September 24, 2022, Authority representatives shared a draft of the proposed rule modification with interested stakeholders for input. Those interested stakeholders included: Racing Officials Accreditation Program; Racing Medication and Testing Consortium (Scientific Advisory Committee); Water Hay Oats Alliance; National Thoroughbred Racing Association; The Jockey Club; The Jockeys’ Guild; Thoroughbred Racing Association; Arapahoe Park; Colonial Downs; Thoroughbred Owners of California; California Horse Racing Board; National Horsemen’s Benevolent and Protective Association; Thoroughbred Owners and Breeders Association; Kentucky Thoroughbred Association; American Association of Equine Practitioners; American

Veterinary Medical Association; Stronach Racing Group (5 thoroughbred racetracks); Churchill Downs (6 thoroughbred racetracks); Keeneland; and Del Mar. On September 19, 2022, the rule modification proposal was made available to the public for review and comment on the HISA website at <https://www.hisaus.org/>. Available on the docket at <https://www.regulations.gov> is Exhibit A, which includes copies of all comments received concerning the rule modification proposal.

Comments on the Assessment Methodology proposed rule modification were received from seven groups in the horseracing industry: Racing Officials Accreditation Program, the American Association of Equine Practitioners, the Washington Horse Racing Commission, Oregon Racing Commission, Oklahoma Horse Racing Commission, American Veterinary Medical Association, and the National HBPA, Inc. The first four of these commenters had no specific suggested changes to the proposed modifications. The Oklahoma Commission and American Veterinary Medical Association both suggested that the retention in the rule of dates that had already occurred was confusing. As noted above, these suggestions were adopted. The remaining commenter, National HBPA, addressed a portion of Rule 8520(e) that had not been proposed to be modified. This commenter also requested that horsemen's organizations be permitted to object to the Equibase numbers. As noted above, this suggestion was adopted. And finally, this commenter suggested that Rule 8520(g) should be revised to establish a process to allocate an underpayment or overpayment. The Authority declined to make this change. No process is necessary. As set forth in the rule, if an injunction is reversed by a court of competent jurisdiction, the Authority shall adjust the allocation due in the current calendar year to account for the overpayment or underpayment created using the Alternative Calculation made during the time that the injunction was in force. This adjustment is simply a mathematical calculation.

IV. Legal Authority

This rule modification is proposed by the Authority for approval or disapproval by the Commission under 15 U.S.C. 3053(c)(1).

V. Effective Date

If approved by the Commission, this proposed rule modification will take effect immediately.

VI. Request for Comments

Members of the public are invited to comment on the Authority's proposed rule modification. The Commission requests that factual data on which the comments are based be submitted with the comments. The supporting documentation referred to in the Authority's filing, as well as the written comments it received before submitting the proposed rule modification to the Commission, are available for public inspection at <https://www.regulations.gov> under docket number FTC-2022-0068.

The Commission seeks comments that address the decisional criteria provided by the Act. The Act gives the Commission two criteria against which to measure proposed rules and rule modifications: "The Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with—(A) this chapter; and (B) applicable rules approved by the Commission."¹² In other words, the Commission will evaluate the proposed rule modification for its consistency with the specific requirements, factors, standards, or considerations in the text of the Act as well as the Commission's procedural rule.

Although the Commission must approve the proposed rule modification if the Commission finds that the proposed rule modification is consistent with the Act and the Commission's procedural rule, the Commission may consider broader questions about the health and safety of horses or the integrity of horseraces and wagering on horseraces in another context: "The Commission may adopt an interim final rule, to take effect

¹² 15 U.S.C. 3053(c)(2).

immediately, . . . if the Commission finds that such a rule is necessary to protect—(1) the health and safety of covered horses; or (2) the integrity of covered horseraces and wagering on those horseraces.”¹³ The Commission may exercise its power to issue an interim final rule on its own initiative or in response to a petition from a member from the public. If members of the public wish to provide comments to the Commission that bear on protecting the health and safety of horses or the integrity of horseraces and wagering on horseraces but do not discuss whether the Authority’s Enforcement proposed rule modification is consistent with the Act or the applicable rules, they should not submit a comment here. Instead, they are encouraged to submit a petition requesting that the Commission issue an interim final rule addressing the subject of interest. The petition must meet all the criteria established in the Rules of Practice (Part 1, Subpart D)¹⁴; if it does, the petition will be published in the *Federal Register* for public comment. In particular, the petition for an interim final rule must “identify the problem the requested action is intended to address and explain why the requested action is necessary to address the problem.”¹⁵ As relevant here, the petition should provide sufficient information for the public to comment on, and for the Commission to find, that the requested interim final rule is “necessary to protect—(1) the health and safety of covered horses; or (2) the integrity of covered horseraces and wagering on those horseraces.”¹⁶

VII. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “HISA Assessment Methodology Rule Modification” on your comment. Your comment—including your

¹³ 15 U.S.C. 3053(e).

¹⁴ 16 CFR 1.31; *see* Fed. Trade Comm’n, Procedures for Responding to Petitions for Rulemaking, 86 FR 59851 (Oct. 29, 2021).

¹⁵ 16 CFR 1.31(b)(3).

¹⁶ 15 U.S.C. 3053(e).

name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the website <https://www.regulations.gov>.

Because of public health considerations and the Commission’s heightened security screening, postal mail addressed to the Commission will be subject to delay. The Commission strongly encourages that comments be submitted online through the <https://www.regulations.gov> website. To ensure that the Commission considers online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write “HISA Assessment Methodology Rule Modification” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other State identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential”—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must

be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule § 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at <https://www.regulations.gov>—as legally required by FTC Rule § 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before **[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/siteinformation/privacypolicy>.

VIII. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner’s advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

IX. Self-Regulatory Organization’s Proposed Rule Language

The following language reflects the Assessment Methodology rule with the proposed modifications incorporated. A redline version that shows every way in which the previously approved Assessment Methodology rule would be modified by the proposed rule modification is available as Exhibit B on the docket at

8500. Methodology for Determining Assessments.

8510. Definitions.

For purposes of this Rule 8500 Series:

- (a) *Annual Covered Racing Starts* means, for the following calendar year, the sum of: (i) 50 percent of the number of Projected Starts; plus (ii) 50 percent of the number of Projected Purse Starts.
- (b) *Covered Horseraces* has the meaning set forth in 15 U.S.C. 3051(5).
- (c) *Covered Persons* has the meaning set forth in 15 U.S.C. 3051(6).
- (d) *Projected Starts* means the number of starts in Covered Horseraces in the previous 12 months as reported by Equibase, after taking into consideration alterations in the racing calendar of the relevant State(s) for the following calendar year.
- (e) *Projected Purse Starts* means: (i) the total amount of purses for Covered Horseraces as reported by Equibase (not including the Breeders' Cup World Championships Races), after taking into consideration alterations in purses for the relevant State(s) for the following calendar year; divided by (ii) the Projected Starts for the following calendar year.
- (f) *Racetrack* has the meaning set forth in 15 U.S.C. 3051(15).

8520. Annual Calculation of Amounts Required.

- (a) If a State racing commission elects to remit fees pursuant to 15 U.S.C. 3052(f)(2), the State Racing Commission shall notify the Authority in writing on or before May 2, 2022 of its decision to elect to remit fees. If a State racing commission elects to remit fees pursuant to 15 U.S.C. 3052(f)(2) for any subsequent calendar year, the State racing commission shall notify the Authority in writing on or before 30 days from the receipt of the estimated amount provided to the State racing commission pursuant to Rule 8520(b). A State racing commission may be permitted to pay a portion of the estimated amount

provided to the State racing commission pursuant to Rule 8520(b). In such case, the remaining portion of the estimated amount provided to the State racing commission pursuant to Rule 8520(b) shall be paid pursuant to Rule 8520(e).

(b) Not later than November 1, 2022, and not later than November 1 of each year thereafter, the Authority shall determine and provide to each State Racing Commission the estimated amount required from each State pursuant to the calculation set forth in Rule 8520(c) below.

(c) Upon the approval of the budget for the following calendar year by the Board of the Authority, and after taking into account other sources of Authority revenue, the Authority shall allocate the calculation due from each State pursuant to 15 U.S.C. 3052(f)(1)(C)(i) proportionally by each State's respective percentage of the Annual Covered Racing Starts. The proportional calculation for each State's respective percentage of the Annual Covered Racing Starts shall be calculated as follows:

(1) the total amount due from all States pursuant to 15 U.S.C. 3052(f)(1)(C)(i) shall be divided by the Projected Starts of all Covered Horseraces; then

(2) 50 percent of the quotient calculated in (c)(1) is multiplied by the quotient of

(i) the relevant State's percentage of the total amount of purses for all covered horseraces as reported by Equibase (not including the Breeders' Cup World Championships Races), after taking into consideration alterations in purses for the relevant State for the following calendar year; divided by

(ii) the relevant State's percentage of the Projected Starts of all covered horseraces starts; then

(3) the sum of (i) the product of the calculation in (c)(2) and 50 percent of the quotient calculated in (c)(1) is multiplied by the Projected Starts in the applicable State. Provided however, that no State's allocation shall exceed 10 percent of the total amount of purses for covered horseraces as reported by Equibase in the State (not including the

Breeders' Cup World Championships Races). All amounts in excess of the 10 percent maximum shall be allocated proportionally to all States that do not exceed the maximum, based on each State's respective percentage of the Annual Covered Racing Starts.

(d) Pursuant to 15 U.S.C. 3052(f)(2)(B), a State racing commission that elects to remit fees shall remit fees on a monthly basis and each payment shall equal one-twelfth of the estimated annual amount required from the State for the following year.

(e) If a State racing commission does not elect to remit fees pursuant to 15 U.S.C.

3052(f)(2) or has remitted a partial payment under Rule 8520(a):

(1) The Authority shall on a monthly basis calculate and notify each Racetrack in the State of the applicable fee per racing start for the next month based upon the following calculations:

(i) Calculate the amount due from the State as if the State had elected to remit fees pursuant to 15 U.S.C. 3052(f)(2) (after taking into account any partial payment under Rule 8520(a)) (the "Annual Calculation").

(ii) Calculate the number of starts in covered horseraces in the previous twelve months as reported by Equibase (the "Total Starts").

(iii) Calculate the number of starts in covered horseraces in the previous month as reported by Equibase (the "Monthly Starts").

(iv) The applicable fee per racing start shall equal (i) the quotient of Monthly Starts divided by Total Starts; (ii) multiplied by the Annual Calculation.

(2) The Authority shall on a monthly basis calculate and notify each Racetrack in the jurisdiction of the following calculations:

(i) Multiply the number of starts in Covered Horseraces in the previous month by the applicable fee per racing start calculated pursuant to paragraph (e)(1)(iv) above.

(ii) The calculation set forth in 15 U.S.C. 3052(f)(3)(A) shall be equal to

the amount calculated pursuant to paragraph (e)(2)(i) (the “Assessment Calculation”).

(3) The Authority shall allocate the monthly Assessment Calculation proportionally based on each Racetrack’s proportionate share in the total purses in covered horseraces in the State over the next month and shall notify each Racetrack in the jurisdiction of the amount required from the Racetrack. Each Racetrack shall pay its share of the Assessment Calculation to the Authority within 30 days of the end of the monthly period.

(4) Not later than December 10, 2022, and not later than December 10 each year thereafter, each Racetrack in the State shall submit to the Authority its proposal for the allocation of the Assessment Calculation among covered persons involved with covered horseraces (the “Covered Persons Allocation”). On or before 30 days from the receipt of the Covered Persons Allocation from the Racetrack, the Authority shall determine whether the Covered Persons Allocation has been allocated equitably in accordance with 15 U.S.C. 3052(f)(3)(B) and if so, the Authority shall notify the Racetrack that the Covered Persons Allocation is approved. If a Racetrack fails to submit its proposed Covered Person Allocation in accordance with the deadlines set forth in this paragraph, or if the Authority has not approved the Covered Persons Allocation in accordance with this paragraph, the Authority shall determine the Covered Persons Allocation for the Racetrack. Upon the approval of or the determination by the Authority of the Covered Persons Allocation, the Racetrack shall collect the Covered Person Allocation from the covered persons involved with covered horseraces.

(f) Not later than March 1 of each year, the Authority shall calculate the actual number of starts in Covered Horseraces as reported by Equibase for the previous calendar year and the actual total amount of purses for Covered Horseraces as reported by Equibase for the previous calendar year and apply such amounts to the calculations set forth in Rule

8520(c) instead of the projected amounts utilized in the calculation of the estimated amount provided to the State racing commission pursuant to Rule 8520(b) for the relevant calendar year (the “True-Up Calculation”). The allocation due from each State in the current year shall be equitably adjusted to account for any differences between the estimated amount provided to the State racing commission pursuant to Rule 8520(b) for the previous year and the True-Up Calculation. Any State racing commission, horsemen’s organization, or Racetrack that believes that Equibase has not accurately reported the correct number of starts in covered horseraces for the previous calendar year or the total amount of purses for covered horseraces for the previous calendar year shall notify the Authority by January 31 of each year of the basis for objecting to the relevant Equibase numbers for the applicable State or Racetrack. The Authority shall review the information submitted and shall determine the actual number of starts in Covered Horseraces for the previous calendar year and the actual total amount of purses for Covered Horseraces for the previous calendar year.

(g) In the event that any court of competent jurisdiction issues an injunction that enjoins the enforcement of the Rule 8500 Series based on the use of Projected Purse Starts in the Assessment Methodology Rule, the applicable States, Racetracks, and Covered Persons, as the case may be, shall pay the allocation due from each State pursuant to 15 U.S.C. 3052(f)(1)(C) and 15 U.S.C. 3052(f)(3)(A)–(C) proportionally by the applicable State’s respective percentage of Projected Starts (the “Alternative Calculation”). If such injunction is reversed by a court of competent jurisdiction and such reversal is final and non-appealable, the Authority shall adjust the allocation due from the applicable States, Racetracks, and Covered Persons, as the case may be, in the current calendar year to account for the overpayment or underpayment created by the use of the Alternative Calculation made during the time that the injunction was in force.

(h) All notices required to be given to the Authority pursuant to the Act and these

regulations shall be in writing and shall be mailed to 401 West Main Street, Suite 222,
Lexington, Kentucky 40507 and emailed to *jim.gates@hisaus.org*.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022-24609 Filed: 11/9/2022 8:45 am; Publication Date: 11/10/2022]